

FIRST AMENDMENT TO CONTRACT
A56-6-06-10

This is an amendment to the contract **entered into by** and between the **Office of the Indiana Attorney General** (hereinafter referred to as "State") and **Lori Kyle Endris** (hereinafter "Contractor").

The State and Contractor have agreed to amend the original contract.

Inconsideration of the mutual **undertakings** and covenants hereinafter set forth, the parties agree as follows:

A. Paragraph 2 ("Consideration") is hereby deleted in its entirety and replaced with the following:

2 Consideration. Counsel shall be paid at the hourly rate of thirty-eight dollars and ninety-five cents (\$38.95). The **maximum** amount payable under this Agreement shall not exceed seventy-five thousand nine hundred fifty-six dollars and fifty cents (\$75,956.50). Counsel shall submit **bi-weekly** invoices to the **State showing** the date and general description of the **Legal Services rendered**. **All** payments shall be made in arrears in accordance with **Indiana** law and state fiscal policies and procedures, and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by Counsel in writing **unless** a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods **or** services that are the subject of this Contract except as permitted by IC 4-13-2-20.

This amendment shall take effect upon execution.

All **other matters** previously agreed to and set forth in the **original agreement** and not affected by this amendment **shall** remain in **full force** and effect.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that **he/she** is the **contracting** party, or that **he/she** is the representative, agent, member, or **officer** of the contracting party, that **he/she** has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation or partnership represented by **him/her**, directly or indirectly, to the best of his/her knowledge, entered into **or** offered to enter into any combination, collusion, or agreement to receive or pay, **and that he/she has** not received **or** paid, any **sum** of money or other consideration for the execution of this **agreement** other than that which appears upon the face of this **agreement**.

THE REST OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

IN WITNESS WHEREOF, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

Lori Kyle Endris

By: Lori Kyle Endris

Date: 12 April 06

APPROVED BY:

DEPARTMENT OF ADMINISTRATION

By: Earl A. Goode (for)
Earl A. Goode,
Commissioner

Date: APRIL 11, 2006

APPROVED AS TO FORM AND
LEGALITY:

By: Elizabeth A. Brown (for)
Stephen Carter,
Attorney General of Indiana

Date: 4-18-06

Indiana Attorney General

By: Stephen Carter
Stephen Carter
Attorney General of Indiana

Date: 4/12/06

OFFICE OF MANAGEMENT AND BUDGET

By: Charles E. Schallid (for)
Charles E. Schallid
Director

Date: 4/13/2006

AGREEMENT WITH OUTSIDE COUNSEL

THIS AGREEMENT ("**this Agreement**") **is** between the State of Indiana acting by and through the Office of the Indiana Attorney General (**hereinafter** the "**State**") and Lori Kyle Endris (**hereinafter** "**Counsel**").

WHEREAS, the State requires assistance in environmental cases (the "**Legal Services**"), and Counsel represents that it is **qualified** to provide the Legal Services.

NOW THEREFORE, in consideration of the premises and the mutual promises and covenants set forth below, it is agreed by and **between** the State and Counsel as follows:

- 1. Duties of Counsel.** Counsel shall perform the following Legal Services as requested by the State. Provide legal counsel and representation to the Indiana Department of Environmental Management (**hereinafter** "**IDEM**") in **administrative** and civil enforcement matters involving state and federal environmental laws and permits; evaluate sufficiency of evidence, present, advocate, litigate and negotiate resolution of enforcement actions including Consent Decrees, **NOV's**, Agreed Orders, License Revocations, Commissioner's Orders and Emergency Orders. Specific areas of responsibility include, but are not limited to: Water Program (**NPDES**, Wetlands, Drinking Water, **CSO's**) and Land (**CERCLA**, **RCRA**, **VRP**, and **CAFO's**). Contractor will also be responsible for other environmental law duties as assigned. Contractor will report directly to **IDEM** Section Chief of Enforcement, **Hala Silvey**. Pursuant to IC 4-6-5-3, the **Indiana** Attorney General hereby appoints, employs and hires Counsel to provide the Legal Services. Counsel shall execute its responsibilities by following and applying the highest professional standards. If the State becomes dissatisfied with the work product or the **working** relationship with any individual assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and Counsel shall grant such request.
- 2. Consideration.** Counsel shall be paid at the hourly rate of **thirty-eight** dollars and ninety-five cents (\$38.95). The maximum **amount** payable under this Agreement shall not exceed **seventy-five** thousand **nine** hundred fifty-six dollars and fifty cents (\$75,956.50). Counsel shall submit monthly invoices to the State showing the date and general description of the Legal Services rendered. All payments shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures, and, as required by IC 4-13-2-14.8, by electronic **funds** transfer to the **financial** institution designated by Counsel in writing unless a specific waiver has been obtained **from** the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of **this** Contract except as permitted by IC 4-13-2-20.
- 3. Term.** This Agreement shall **begin** on March 1, 2006 and end on **February** 28, 2007. It may be renewed or extended only by written agreement.
- 4. Access to Files and Records.** The State shall have full, immediate, and unrestricted access to the work product of the Counsel during the term of this Agreement. Upon termination or expiration of this Agreement, Counsel shall, without further request and at no cost to the State, turn over to the State all files relating to the work performed under this Agreement. Counsel acknowledges that it may be required to submit to an **audit** of **funds** paid pursuant to this Agreement, and shall maintain at

its offices all books, accounting records, and other evidence pertaining to costs incurred and invoiced under this Agreement. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration, for inspection by the State or its authorized designee. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment. Counsel shall not assign any part of the Legal Services to be performed under this Agreement to a third party without the State's prior written consent. Counsel **may** assign its right to receive payments to such third parties as it may desire without the prior written consent of the State, provided that Counsel gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment **so** assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

6. Changes in Work Counsel shall not change scope of the Legal Services to be performed pursuant to this Agreement or undertake additional work on **behalf of** the State unless authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written agreement.

7. Compliance with Laws and Licensing Requirements.

A. Counsel, partners, and employees shall comply with **all** applicable registration and **licensing** requirements, rules, standards and codes of conduct governing the practice of law and the transaction of business in Indiana. Counsel shall immediately **notify** the State **if any** disciplinary actions are brought against it or any of its attorneys. Counsel certifies, by entering into this Agreement, that neither it nor any of its partners, associates or any other attorney associated with Counsel is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana.

B. As required by IC 5-22-3-7:

- (1) Counsel and any principals of Counsel **certify** that
 - (A) Counsel, except for de minimis and **nonsystematic** violations, **has** not violated the terms of
 - (i) IC 24-4.7 [Telephone Solicitation of Consumers],
 - (ii) IC 24-5-12 [Telephone Solicitations], or
 - (iii) IC **24-5-14** [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even **if** IC 24-4.7 is preempted by federal law; and
 - (B) Counsel will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.
- (2) Counsel and any principals of Counsel **certify** that an **affiliate** or principal of Counsel and any agent acting on behalf of Counsel or on behalf of an **affiliate** or principal of Counsel:
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even **if** IC **24-4.7** is preempted by federal law; and

- (B) **will** not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

8. Conflict of Interest.

A. Counsel represents and warrants that, after due and diligent inquiry, it is satisfied that it has no Conflict of Interest (as that term is defined in the *Indiana Rules of Professional Conduct*) that will preclude it **from** providing the Legal Services.

B. Counsel represents and warrants that it has reviewed and **is** familiar **with** the statutes and regulations relating to the ethical conduct of state employees. Counsel certifies that, **after** due **inquiry**, no partner or any spouse or **unemancipated child** of any partner (collectively, an **"Interested Party"**), **is** an employee of the State of Indiana. If an Interested Party is an employee of the State of Indiana, Counsel shall provide the State with an opinion by the State Ethics Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the Interested **Party** does not violate any statute or regulation relating to the ethical conduct of state employees.

9. Continuity of Services. Counsel recognizes that the Legal Services provided under this Agreement are vital to the State and must be continued without **interruption** and that, upon expiration or termination of this Agreement, a successor, either the State or another **Counsel**, may continue **them**. Counsel shall use its best efforts and cooperation to effect an orderly and efficient transition to a successor, and shall be reimbursed for all reasonable transition costs.

10. Disputes.

A. Counsel agrees that, the existence of a dispute notwithstanding, it **will** continue **without** delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should Counsel fail to continue to perform its responsibilities as regards all non-disputed work, **any** additional costs incurred by the State or Counsel as a result of such failure shall be borne by Counsel, and Counsel shall make no claim against the State for such costs.

B. The parties agree to resolve disputes through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to **writing** and mail or otherwise **furnish** a copy thereof to Counsel and the Office of the Attorney General within ten (10) **working** days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either **party** mails or otherwise **furnishes** to the Commissioner, within ten (10) **working** days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the **Commissioner** of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) **working** days, the parties may mutually **agree** to submit the dispute to arbitration for a **determination**, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

C. The State may withhold payments on disputed items pending resolution of the dispute. The **unintentional** nonpayment by the State of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for Counsel to terminate this Agreement, and Counsel **may** bring suit to collect these amounts without following the disputes procedure contained herein.

11. Drug-Free Workplace. As required by Governor's Executive Order No. 90-5 dated **April 12, 1990**, Counsel certifies and agrees that it will provide a **drug-free** workplace by:

A. Publishing and providing to **all** of its employees a statement **notifying** its employees that the **unlawful** manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Counsel's workplace and **specifying** the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a **drug-free** awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Counsel's policy of maintaining a drug-free workplace; (3) any available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. **Notifying** all employees in the statement required by subparagraph (A), above, that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) **notify** Counsel of any criminal drug statute conviction for a **violation** occurring in the workplace no later than five (5) days **after** such conviction; and

D. **Notifying in writing** the State within ten (10) days **after receiving** notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under **subdivision (C)(2)** above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free **workplace** through the implementation of subparagraphs (A) through (E) above.

12. Ethics. **Counsel** shall abide by all ethical requirements that apply to persons who have a business relationship with an agency, as set forth in Indiana Code § 4-2-6 **et seq.**, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Counsel is not familiar with these ethical requirements, it should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics **Commission website** at <<<<http://www.in.gov/ethics/>>>>. If Counsel or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to Counsel. In addition, Counsel may be subject to penalties under Indiana Code § 4-2-6-12."

13. Funding Cancellation. **When** the director of the State Budget Agency makes a **written** determination that **funds** are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be **final** and conclusive.

IN WITNESS WHEREOF, Counsel and the State by their duly authorized representatives have executed this Agreement as of the dates set forth below.

Lori Kyle Endris

By: Lori Kyle Endris

Atty #: 132867-49

Date: 2-28-06

Indiana Office of the Attorney General

By: [Signature] (for)
Stephen Carter, Attorney General

Date: 3-1-06

Indiana Department of Administration

By: Darlene R. Patterson (for)
Earl Goode, Commissioner

Date: 3/16/06

Budget Agency

By: [Signature] (for)
Charles Schalliol, Director

Date: 3/21/2006

Form and Legality:

Indiana Office of the Attorney General

By: [Signature] (for)
Stephen Carter, Attorney General

Date: 3/23/06